(1) (3) (3)

IN THE HONRABLE HIGH COURT OF JUDICATURE AT BILASPUR.

CRI. A. No:- 784 /2002. [S...B.].

Appealants:- (In jail)

1:- Jaheer Khan @ Jabed Akhatar @ Jaheer Ansai aged 38 yrs.S/o Usman Khan @ Ismail Ansari R/o Village –Chama At present R/o. Mahua Ghoda , behind Bukbuka Masajid P.S. Khalari distt- Ranchi (Jharkhand).

2:- Ravindraw Singh @ Dharmendra Singh s/o .RamdeoSingh @ Ram -brachha Rajpoot aged –23 yrs. R/o Bijoo pada P.S. Mander distt- Ranchi (Jharkhand)at present R/o Chaliyo P.S. Chanho distt- Racnhi. (Jhanrkhanda.)

Filed on... 29-7-02 by Shri... Renu Prabha Gupta ...Advocate

R. to D.R. (J) 29/7

VERSUS

Respondant:- State of C.G..

Appeal under section –374 of Criminal . Procedure . Code.

(37)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Criminal Appeal Number-784/2002

Jaheer Khan & Ravindra Singh

Vs.

State of Chhattisgarh

Criminal Appeal Number-814/2002

Ajay Tirkey

Vs.

State of Chhattisgarh

Post for Judgment: 10.5.06

Sd/-
Dilip Raosaheb Deshmukh
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Criminal Appeal Number-784/2002

Jaheer Khan & Ravindra Singh

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State of Chhattisgarh

Criminal Appeal Number-814/2002

Ajay Tirkey

Vs.

State of Chhattisgarh

PRESENT: -

Smt Savita Tiwari, learned counsel for the appellants.

Shri Arun Sao, G.A./Addl. Public Prosecutor for the State.

J U D G M E N T

(Delivered on 10-05-2006)

Both the abovementioned appeals are directed against the judgment dated 24-04-2002 delivered by Shri A.K.Patel, Additional Sessions Judge, Baikunthpur, District-Korea in Sessions Case No.62/2002 whereby the appellants were convicted under Section-395 read with Section-397 of IPC and were sentenced to rigorous imprisonment for 10 years. The appellants were also convicted under Section-25(1) (B) (a) read with Section-27(1) of the Arms Act and were sentenced to rigorous imprisonment for 3 years each. All the sentences were ordered to run concurrently.

2. Brief facts are that the 3 appellants along with 2 other persons with intention to commit dacoity went to the Central Bank of India, Baikunthpur on 11-10-2001 at about 12.15 P.M. The

appellants were armed with Deshi Katta, Khukri and Deshi Revolver. After entering into the Bank, the appellants & two others, at the point of Deshi Katta assaulted the bank officials and customers and closed them in a room. Thereafter, the appellants breaking the cash counter looted the amount of Rs.3,68,552.64. Upon resistance by the Branch Manager, Ashok Kumar Barua PW-6, one of the appellants assaulted him by a Deshi Katta on the head and thereafter the appellants escaped in a Marshal Vehicle bearing Registration Number-M.P.-27-B-5701. Prompt F.I.R. was lodged vide Ex.P-9 by Shri Ashok Kumar Barua PW-6 at Police Station-Patna, District-Korea. During investigation, the abovementioned Marshal Vehicle was seized on 11-10-2001 at 2 P.M. by Sub Inspector Shri R.P.Singh PW-23 from the forest where it had been concealed. A live cartridge point 0.315 bore and a handwritten letter Ex.P-29 were also seized from the vehicle.

3. During investigation on 14-10-2001, Station House Officer, R.P.Singh PW-23 seized one Deshi Katta with cartridge, one weapon Khukri and Rs.1,95,245/- kept inside a black bag from appellant Jaheer Khan vide Ex.P-4, one Deshi Revolver with 6 cartridges of 0.38 bore and Rs.1 Lakh cash from appellant Ajay Tirkey vide Ex.P-7 and one Deshi Katta, a weapon Khukri and Rs. 71,300/- kept inside the black bag from appellant Ravindra Singh vide Ex.P-8. All the present appellants were arrested on 15-10-2001.

4. The appellants were subjected to test identification by Executive Magistrate S.L.Markam PW-21 at the Sub Jail, Baikunthpur on 19-11-2001. Ashok Kumar Barua PW-6 identified the appellants at 4.35 P.M. vide Ex.P-11. Man Singh, Cashier of the Bank PW-9 identified the appellants at 4.45 P.M. vide Ex.P-16. Mohd. Hazarat Khan PW-19 from whose possession the appellant had looted the abovementioned vehicle a day before the occurrence

identified the appellants at 3.45 P.M. vide Ex.P-18. Anand Tamrakar PW-12 who worked at the Anand Hotel, Vishrampur and where the appellants had stayed, identified the appellant Jaheer Khan & Ajay Tirkey vide Ex.P-19 on 22-11-2001 at 2.45 P.M.

5. Two Deshi Katta and one Country made Revolver seized from the appellants as shown above along with cartridges were examined by Manual Kerkatta, Armorer PW-3 who opined vide Ex.P-5 and 6 that the cartridges were live cartridges and could be fired from the Deshi Kattas and Country made Revolver. After completion of investigation, the appellants were prosecuted for offences under Section-395 read with Section-397 of IPC and under Section-27 (1)(B)(a) of the Arms Act. The prosecution examined as many as 23 witnesses. Relying upon the evidence of Station House Officer R.P.Singh PW-23 and the evidence relating to test identification of the appellants by Ashok Kumar Barua PW-6, Man Singh PW-9, Baijnath, PW-7 and Anand Tamrakar PW-12 and also the factum of seizure as aforesaid vide Ex.P-4, P-7 and P-8, the learned trial Judge convicted and sentenced the appellants as aforesaid in para-1. (Supra)

6. Smt. Savita Tiwari, learned counsel appearing for the appellants has assailed the conviction of the appellants as aforesaid on the sole ground that identity of the appellants in committing the dacoity at the Central Bank of India, Baikunthpur was not established by the prosecution and delay in conducting the test identification on 19-11-2001 and 22-11-2001 renders it unworthy of credit. The possibility that the appellants were shown to the witnesses before the test identification during the period of police remand or judicial remand could not be ruled out. It was also pointed out that although vide seizure memo Ex.P-4, P-7 and P-8 cash was alleged to have been recovered from each appellant from

one black coloured bag, the bags were not produced by the prosecution which renders the factum of seizure doubtful. On the other hand, Shri Arun Sao, Govt. Advocate argued in support of the impugned judgment.

7. Having considered the rival submissions, I have perused the record of Sessions Trial Number 62/2002 minutely.

8. The testimony of Shri Ashok Kumar Barua PW-6 establishes that a dacoity was committed by the appellants and two others in the bank on 11-10-2001 who were armed with Deshi Katta and Revolver and had looted an amount of Rs.3,68,552.64 from the bank after assaulting him with a Deshi Katta and thereafter the appellants had escaped in a Marshal Vehicle bearing Registration Number-M.P.-27-B-5701.

9. The unrebutted testimony of Mohd. Hazrat Khan PW-19 clearly shows that the appellant had hired the Marshall Vehicle bearing Registration Number-M.P.-27-B-5701 and he had taken the appellants to Anand Hotel, Vishrampur from where the appellants asked him to take the vehicle towards river and at the point of a Deshi Katta, injected him and tied him with a rope and gagged his mouth. This witness has made a positive assertion that he had identified all the 3 appellants in the Sub Jail of Baikunthpur vide Ex.P-18. The testimony of Station House Officer R.P.Singh PW-23 also establishes the factum of seizure of Deshi Katta/Cartridges, a weapon Khukri and Rs.1,95,245/- kept in a bag from the appellant Jaheer Khan vide Ex.P-4 on 14-10-2001 and the seizure of one country made Revolver of 6 cartridges and Rs. 1 Lakh cash kept in a bag from the appellant Ajay Tirkey vide Ex.P-7 and seizure of one Deshi Katta, a weapon Khukri and Rs. 71,300/- from the appellant Ravindra Singh videEx.P-8 on14-10-2001. The mere non production of the bags from which cash was recovered from the appellants does

not render the testimony of Station House Officer R.P.Singh PW-23 unreliable in any manner. The testimony of Manual Kerketta, Armorer PW-3 also proves that the cartridges sent for examination, were live cartridges which could be fired through Deshi Katta and Country made Revolver. Sanction for prosecution of the appellants under Section-25 & 27 of the Arms Act has also been proved by the prosecution.

10. It is also true that Ashok Kumar Barua PW-6, Goondu Ram PW-20 witnesses of seizure from the appellant Jaheer Khan, Indrapal Singh PW-17, Ram Kumar PW-4, witnesses of seizure from the appellant Ajay Tirkey and Mangal Sai PW-5, witness of seizure from the appellant Ravindra Singh turned hostile. However, this by itself is not sufficient to discard the testimony of Station House Officer R.P.Singh PW-23, which in my considered opinion, is reliable, inspires confidence and is worth credence. So far as the test identification of the appellants at Sub Jail, Baikunthpur is concerned, Executive Magistrate S.L.Markam PW-21 has given a detailed description of the test identification parade in which he had taken care to see that only the face of the persons standing in the identification parade was visible and the remaining part of the body was covered under blanket. He also took precaution to ensure that the witnesses did not simultaneously identify the appellants. Each witness was called at a different time. Ashok Kumar Barua PW-6 identified the appellants at 4.35 P.M. vide Ex.P-11, Man Singh PW-9, Cashier of the Bank identified the appellants at 4.45 P.M. vide Ex.P-16 and Mohd. Hazarat Khan PW-19 identified the appellants at 3.45 P.M. on 19-11-2001 and similarly Anand Tamrakar PW-12, Hotel Clerk identified the appellant Jaheer Khan and Ajay Tirkey on 22-11-2001 at 02.45 P.M. Shri S.L.Markam PW-21, Executive Magistrate has categorically denied the defence assertion that the appellants were shown to the witnesses before the test identification

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parade. There is nothing in his testimony which would vitiate the test identification parade.

11. Station House Officer R.P.Singh PW-23 has in para-22 of his testimony clearly stated that during the entire period of police remand and Judicial remand, face of the appellants was always covered till the appellants were admitted in the jail. In para-52 of his testimony he made a positive assertion that the appellants were always brought to the Court for Judicial remand in a closed van with their faces covered. There is nothing in the testimony of Station House Officer R.P.Singh PW-23 which would go to show that the appellants were shown to the witnesses at any time before the test identification parade.

12. Lastly, the contention of the defence counsel that delay in conducting the test identification parade destroys its value is required to be stated only to be rejected. It is true that after the arrest of the appellants on 15-10-2001, the test identification parade was held on 19-11-2001 and 22-11-2001 at Sub Jail, Baikunthpur by Executive Magistrate S.L.Markam PW-21. In the absence of any evidence to show that there was any possibility that the appellants were shown to the witnesses before they were subjected to test identification, the evidence of Executive Magistrate S.L.Markam PW-21 cannot be discarded merely on the ground of delay in conducting the test identification parade. Ashok Kumar Barua PW-6, Man Singh PW-9,Cashier of the Bank, Mohd. Hazarat Khan PW-19 and Anand Tamrakar PW-12 have categorically ascertained that all the appellants at the Sub Jail, Baikunthpur. In this view of the matter, this plank of the arguments of the learned defence counsel also fails.

13. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the prosecution has established beyond the shadow of any doubt that on

11-10-2001 the appellants along with two other persons had entered the Central Bank of India, Baikunthpur while being armed with deadly weapons Deshi Katta, Deshi Revolver with Cartridges and Khukri and had after assaulting Branch Manager Ashok Kumar Barua PW-6 by a Deshi Katta robbed the bank of cash Rs.3,68,552.64.

14. In the result, conviction of the appellants under Section-395 read with Section-397 of IPC and under Section-25 (1) (B) (a) read with Section-27(1) of the Arms Act and the sentences awarded thereunder is well founded and does not call for any interference. Both the appeals being devoid of merit are dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge